

Scottish Parliament Region: South of Scotland

Case 200501799: East Lothian Council

Summary of Investigation

Category

Local government: Neighbour disputes and anti-social behaviour

Overview

The complaint from Mr C concerned East Lothian Council (the Council)'s alleged failure to take effective action against a neighbour who, it was said, did not comply with the terms of his tenancy by cleaning the common areas of the property where he lived.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to take effective action against their tenant who did not comply with the terms of his tenancy (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 6 March 2006, the Ombudsman received a complaint from Mr C alleging that East Lothian Council (the Council) had failed to take effective action against his neighbour at number 27 X, who, he said, did not comply with the terms of his tenancy by cleaning the common areas of the property in which they lived. Mr C considered his neighbour's behaviour to be anti-social.

2. The complaint from Mr C which I have investigated is that the Council failed to take effective action against a neighbour who, it was said, did not comply with the terms of his tenancy by cleaning the common areas of the property where he lived.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of correspondence between the Council and the neighbour. On 1 August 2006, a written enquiry was made of the Council and their reply was received on 28 August 2006.

4. My findings and conclusion are set out below and, although I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

Complaint: The Council failed to take effective action against their tenant who did not comply with the terms of his tenancy

5. Mr C lives in a block comprising seven flats at 27 X. Four of the occupants are owner occupiers, the remaining three are Council tenants. Mr C is one of those owning their property. The documentation available shows that the complainant first raised his concerns with the Council in July 2002 and that he continues to do so. Essentially the complaint made to this office was that his neighbour failed to take his turn in cleaning the common areas where they lived (mainly the stair and the bin cellar) and that he frequently lost or failed to pass on the cleaning rota card disrupting the cleaning process for everyone in the building.

Mr C believed that after his years of complaint, the Council should have taken a stronger line with his neighbour.

6. There is a significant amount of correspondence between Mr C and the Council but, on 2 March 2005, Mr C received a letter from the Head of Community Housing and Property Management which, amongst other things, said that there were two routes available to the Council to ensure that the neighbour took his turn with the cleaning; either by Specific Implement (a legal direction to take action) or by enforcing the terms of his tenancy agreement. He said that either approach could result in the neighbour fulfilling his obligations but in the event of failure, the Council would be in a position to take enforcement action. The neighbour was then instructed to clean the stair commencing on 15 March 2005 as outlined in his tenancy agreement, and, thereafter, in accordance with the cleaning rota. Mr C was asked to keep the Council informed of the situation.

7. Later, because it appeared that the neighbour had once again failed to fulfil his obligations, on 5 April 2005 Mr C was advised that instructions had been passed to the Council's Legal Department to commence appropriate legal action. Meanwhile, the Council said that they continued to monitor the situation in the building and remained in contact with the tenant concerned. This culminated in a letter to the neighbour on 21 September 2005 advising him that should he continue to fail to clean the communal areas the Council would have 'no alternative but to take appropriate action'. The letter asked the neighbour to contact the Council's Community Housing Officer to inform him when he had carried out the cleaning of the communal area (including the stair, bin store and main entrance). Mr C was informed of this on 28 September 2005 and also advised that the Community Housing Manager was closely monitoring the situation.

8. Mr C continued to write to the Council about his concerns in relation to the cleaning of the mutual areas in the property. He was aggrieved at what he considered to be the Council's delay in taking effective action. He wrote four times in October 2005 (3 October, twice on 23 October and 24 October). The Council responded suggesting a meeting with the complainant and reassuring him that they were investigating his complaints. They advised that legal action would be taken if the circumstances justified 'such serious action'. Meanwhile on 21 November 2005 the Community Housing Manager visited the property and found the common

areas of the property to be in good condition. Nevertheless, on 20 December 2005 a circular letter was sent to all the occupants of 27 X reminding them of their responsibilities with regard to cleaning and, on 22 December 2005 a further, specific letter was sent to the neighbour.

9. Mr C remained dissatisfied with the cleaning standards in the property, and the Council's response to his complaints, and he maintained his correspondence pursuing his complaint. On 6 March 2006 he complained to the Ombudsman.

10. In his response to me of 28 August 2006 the Head of Community Housing and Property Management said that the Council had responded in a variety of ways to Mr C's complaints, including reminding all residents of their responsibilities and direct conversations and correspondence with the neighbour concerned (paragraphs 6 to 8 above). The Council confirmed that an issue with dog fouling had been addressed in April 2005, that Council officers also made visits to the property and in November 2005 (see paragraph 8) were satisfied with what they found. The Council conceded in their reply to me that the neighbour had not always been responsive to their approaches and, when Community Housing spoke directly to him, he had contested the view that he does not participate in the cleaning. He had, however, accepted that on occasion he had lost the cleaning rota card.

11. The Council's response also pointed to the fact that the issue of stair cleaning can cause enormous friction between residents and that often tenants have conflicting views about what is an acceptable standard in terms of cleaning. In view of this, they said they are currently considering whether the introduction of a factoring service at a charge to residents (which could provide a variety of services, including stair cleaning), would resolve this source of contention. However, they confirmed that officers continue to visit the property regularly and inspect the stair. They have found no cause for concern.

Conclusion

12. Mr C said that his neighbour failed to meet his obligations with regard to cleaning the mutual areas of the property at 27 X and that the Council then failed to take effective action against him. After carefully considering all the information available to me, I do not agree. Although I do not dispute that the neighbour may

have failed to fulfil his cleaning responsibilities, and certainly to the standards Mr C would want, I am satisfied that the Council took appropriate and proportional action about the matter. They reminded all the residents, specifically the neighbour, of their responsibilities. They visited the neighbour, discussed the problem and told him what could happen if he failed to comply with his tenancy agreement (by letter of 21 September 2005) and, while the neighbour did not always take his turn in the cleaning rota or participate to Mr C's standards, the Council have been satisfied with the condition of the stair and other areas when they visited (paragraph 8). The fact that they have decided not to take enforcement action against the neighbour is not confirmation that they have failed properly to deal with the matter. Their decision was taken in the light of events and, their approach was considered to be proportional to the circumstances pertaining. In the circumstances, it is not open to me to criticise a decision properly taken in the full knowledge of the facts. Accordingly, I do not uphold the complaint.

27 February 2007

Explanation of abbreviations used

Mr C

The complainant

The Council

East Lothian Council